

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JOHN FLY,

Plaintiff,

v.

**MULTNOMAH COUNTY SHERIFF'S
DEPARTMENT,**

Defendant.

Case No. 3:23-cv-1359-YY

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on October 20, 2023. Judge You recommended that this Court *sua sponte* dismiss Plaintiff's complaint and because he was given a chance to amend his complaint and failed to do so, enter a judgment dismissing his eviction-related claim with prejudice for lack of subject matter jurisdiction and his assault claim without prejudice. Plaintiff did not file any objection.

Under the Federal Magistrates Act (Act), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge's findings and recommendations, "the court

shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge You’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge You’s Findings and Recommendation, ECF 9. The Court *sua sponte* DISMISSES this case. The Court dismisses Plaintiff’s claim relating to the eviction order with prejudice and dismisses Plaintiff’s assault claim without prejudice. Because it appears that Plaintiff’s mailing address is no longer correct and he has failed to comply with Local Rule 83-10 and provide his current mailing address, the

Court Clerk is directed to email a copy of this Order, the Judgment, and the Findings and Recommendation to Plaintiff.¹

The Court further finds that any appeal from this Order would be frivolous and thus would not be taken in “good faith” as that term is used in 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, Plaintiff’s *in forma pauperis* status should be revoked.

IT IS SO ORDERED.

DATED this 27th day of November, 2023.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

¹ The Court notes that Plaintiff was provided a copy by email of Judge You’s Order (ECF 6) explaining the deficiencies in Plaintiff’s complaint and providing Plaintiff the opportunity to amend his complaint to avoid dismissal of this case. *See* ECF 7.